Office-Supreme Court, U.S.
FILED
MAR 7 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1008

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

COUNTY OF VENTURA,

Petitioner,

vs.

JOYCE TILLETT,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

BARBARA JEAN PENNY

14414 Hamlin Street
Van Nuys, CA 91401
(213) 988-6625

Attorney for Respondent

IN THE SUPREME COURT OF THE

UNITED STATES

October Term, 1982

No. 82-1008

COUNTY OF VENTURA,

Petitioner,

v.

JOYCE TILLETT,

Respondent.

RESPONSE TO PETITION

FOR WRIT OF CERTIORARI

QUESTIONS PRESENTED

Your respondent submits that the questions presented should be more narrowly presented to read as follows:

1. Before an unrepresented indigent defendant who has already been served with a summons and complaint in a suit filed by a county for child support alone, when

paternity is not at issue, can enter into a stipulated judgment to pay child support, which judgment carries with it the threat of incarceration, does the Fourteenth Amendment first require the holding of a prejudgment judicial hearing at which such defendant must waive the right to notice and the right to a hearing on the merits?

2. Does the Fourteenth Amendment require the appointment of counsel for indigent defendants who are exposed to a deprivation of property and liberty as a result of the filing and service of a civil suit instituted and ultimately prosecuted by the county for child support alone when paternity is not an issue?

TABLE OF CONTENTS

	PAGES
QUESTIONS PRESENTED	1
TABLE OF CONTENTS	3
TABLE OF AUTHORITIES	4
INTRODUCTION	5
STATUTORY PROVISIONS INVOLVED	5
STATEMENT OF THE CASE	5
ARGUMENT	6
CONCLUSION	18

TABLE OF AUTHORITIES

CASES	PAGES
D.H. Overmyer Co. v. Frick Co., 405 U.S. 174, 31 L.Ed.2d 124, 92 S.Ct. 775	14
CONSTITUTION	
Fourteenth Amendment	2, 6, 18
STATUTES	
Cal.Welf. & Inst. Code §11350.1	5

INTRODUCTION

As a clarification of the statutory provisions involved, your respondent believes that the following portion of California Welfare and Institution Code Section 11350.1 is also relevant:

> "... Nothing herein contained shall be construed to prevent the parties from bringing an independent action under the Family Law Act or otherwise, and litigating the issue of support. In such event, the court in such proceedings shall make an independent determination on the issue of support which shall supercede the order made pursuant to this section."

STATEMENT OF CASE

To clarify petitioner's statement of the case, respondent would submit that although the County of Ventura was

acting on behalf of two of Joyce Tillett's minor children, she had three children, one of which was living with her at this time.

When Joyce Tillett went to the District Attorney's office in the County of Ventura, she advised a representative of the office, whose name is not known, that there was a pending order in the County of Los Angeles for her husband to pay child support payments.

In addition, she advised them that she was not working and could not afford to pay payments.

ARGUMENT

The Petition for Writ of Certiorari should be denied for the following reasons:

1. The Fourteenth Amendment does

mandate a knowing, intelligent and voluntary waiver when a defendant waives their right to due process. The California Court of Appeal properly found that a judgment is void unless such a waiver is on the record.

It would not have been so difficult for the District Attorney's Office in the County of Ventura to have advised defendant of her defenses so that she could properly assess the situation and proceed accordingly.

It is just such conduct as this by a county agency that mandates additional safeguards for indigent defendants.

The petitioner urges upon us the proposition that since defendant had been served with a summons and complaint she had the opportunity to appear and to contest the issue on the merits.

When defendant received the summons

and complaint, she did the only thing that a law-abiding person without funds could do, she contacted the District Attorney's Office in the County of Ventura in an effort to clear up the matter.

She was induced by them to come into their office to see if they could reach some agreement for repayment of the monies paid out by them.

Joyce Tillett had no money to retain an attorney, she was not advised of any of her rights or defenses that she may have had to the action, and there was no provision for any prejudgment judicial determination on the issue of waiver even though the judgment entered could deprive defendant of personal property and her freedom. Under the circumstances in which the stipulation for judgment was entered into, it could not be presumed that it was voluntarily executed.

In any instance when a defendant has a county or state agency as his adversary, he must be afforded his constitutional rights as there is no doubt that the county or state has a superior position. There must be safeguards to protect the unsuspecting defendant.

Your petitioner would have us believe that if their Petition for Writ of Certiorari is not granted and the holding in this case is allowed to stand that neither society nor children in particular would be benefited.

They state if certiorari is not granted thousands of child support judgments will be treated as constitutionally void and thousands of children will then be left without support from their parents.

If we are to take the County of Ventura v. Tillett as an average case

that is being handled by the County of Ventura District Attorney's Office, it would certainly save hours of judicial time if there is a judicial determination of the validity of any constitutional waiver.

In the case at bar your defendant, Joyce Tillett, went to the District Attorney's Office and executed a stipulation for judgment. This stipulation was submitted to the judge for his signature only. At this point we have possibly five minutes of judicial time involved.

However, what is the result of this procedure?

When there is an indigent defendant entering into a stipulation to pay money which she could ill-afford, there can only be one result and that is a contempt proceeding for nonpayment of the

stipulated support.

Therefore, the District Attorney's Office brought a contempt action for nonpayment of the stipulated judgment against Joyce Tillett and Tillett appeared in court in pro per at which time she pled guilty to four counts of contempt.

At this point we have more court time and additional hours being spent by the District Attorney's Office in paperwork and appearances.

At the time the second contempt action was brought against Joyce Tillett she was, in spite of her economic circumstances, forced to find an attorney who would take her case on a pro bono basis.

The defendant and I appeared in court, once again a judicial hearing, we had a conference with the court, the

matter was put over for additional investigation by defendant's attorney, we appeared back in court on the motion to vacate, and then went forward with the hearing at that time.

Had Joyce Tillett not sought out an attorney and had been found guilty of contempt she would have either gone to jail or been admonished by the court that she must start making payments or face a jail sentence.

Here again, if Tillett did not have the means to pay by that time, she would once again be in contempt and additional judicial time would have been spent.

Should Joyce Tillett have gone in without an attorney and been incarcerated, then here we could have some more of the taxpayers' money used to keep Joyce Tillett in a jail cell for nonpayment of support which she could ill-afford at the

time she went in and entered into her original stipulation.

In the alternative a judicial determination of the validity of the waiver of Joyce Tillett's constitutional rights could be quickly ascertained on the issue of whether she had knowingly, intelligently and voluntarily waived her right to due process.

Your respondent does not believe that by affording indigent defendants their right to counsel in actions brought by a state or county agency that thousands of children will be left without support from their parents.

It appears that the County of Ventura is attempting to force on us the proposition that since they have been using the same procedures as used against Joyce Tillett for some period of time, that, although these may not be handled

with due regard to a person's constitutional rights, they should be allowed to continue these procedures because otherwise thousands of children will be left without support from their parents.

I do not believe that one necessarily follows the other since the County of Ventura has not pointed out why thousands of children will be left without support from their parents.

Would they have us believe that there are not Penal Code sections under which they are protected?

In addition, I do not understand why the County of Ventura would want a judgment for an indigent parent to pay support anyway.

Could not the indigent parent who is not earning to his ability be subjected to the same procedures as are used in

family court? In our family law cases in our civil courts a parent who is not working is given a couple of months to find a job and to return to court at that time.

In addition, they can be forced to undergo testing by a rehabilitation counselor to ascertain what the party's actual earning ability is and to determine if the party is not actually earning to that ability.

Why would not these simple procedures be less expensive and in the best interest of all parties?

Why could not the County of Ventura have advised Joyce Tillett, in writing, of her possible defenses, so that she could ascertain if she had a valid defense to the action brought by the County of Ventura?

What justice can possibly result from

a person being circumvented from defending on the merits?

Your petitioners point to the case of D.H. Overmyer Co. v. Frink Co., 405 U.S. 174, 31 L.Ed.2d 124, 92 S.Ct. 775, for the proposition that stipulated judgments for child support meet constitutional requirements for due process.

Overmyer can be easily distinguished from the case at bar in that in the Overmyer case the cognovit note had resulted from negotiations conducted by counsel for both parties.

The court stated in Overmyer that confessions of judgment were constitutional if, 1) supported by consideration of creditor, 2) it resulted from negotiations between parties of equal bargaining power, and 3) a valid defense was authorized by Ohio procedure.

Petitioners would have us believe

that by handing a summons and complaint to an indigent defendant that that is all which is required to satisfy the due process requirement of notice and opportunity for hearing.

Notice and opportunity to appear and defend carries with it the assumption that one knows what their defenses are.

In the within action, the County of Ventura well knew what Mrs. Tillett's defenses were but they would not tell her.

How can this be considered due process?

In the within action, the petitioner urges on us the fact that both parties came together and worked out an agreement satisfactory to both.

That is not the case at all. In this case, two parties of unequal bargaining strength came together and respondent Tillett came out of it with a stipulation to pay a judgment which she could not

afford. She was not working. This cannot be an agreement that is satisfactory to both parties.

CONCLUSION

Wherefore, your respondent urges that:

1. Before an unrepresented indigent defendant who has aleady been served with a summons and complaint filed by a county for child support, when paternity is not at issue, can enter a stipulated judgment to pay child support, which judgment carries with it the threat of incarceration, the Fourteenth Amendment does require the holding of a prejudment judicial hearing, at which such defendant must waive the right to notice and the right to a hearing on the merits.

2. The Fourteenth Amendment does require the appointment of counsel for indigent defendants who are exposed to a

deprivation of property and liberty as a result of the filing and service of a civil suit instituted and ultimately prosecuted by the county for child support alone when paternity is not at issue.

Petition for Writ of Certiorari should be denied.

Respectfully submitted,

BARBARA JEAN PENNY
Attorney for Respondent